

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 12-3109 JB

vs.

ERNESTO RODRIGUEZ,

Defendant.

DEFENDANT'S MOTION FOR LEAVE OF COURT TO SUPPLEMENT
DEFENDANT'S EXHIBIT AND WITNESS LIST

COMES NOW the Defendant, Ernesto Rodriguez (by and through his counsel of record Assistant Federal Public Defender Brian A. Pori) and pursuant to the Sixth Amendment of the United States Constitution and Rule 45 of the Federal Rules of Criminal Procedure to respectfully request that the Court grant him leave to supplement his Witness List (Doc. 88) to add Vicki Garcia, the Albuquerque General Manager of Copart Auto Wholesaler and to supplement his Exhibit List (Doc. 92) to add a copy of the New Mexico Driver's License of Guadalupe Prieto which was maintained by Copart during their normal course of business. In support of this opposed Motion, counsel for Mr. Rodriguez states:

1. Mr. Rodriguez has been indicted for, *inter alia*, conspiring to possess marijuana with the intent to distribute (in violation of 21 U.S.C. § 841(a)(1) and (b)(1)[C] and § 846). (Doc. 64.)

2. This Honorable Court has set this case for trial on July 6, 2015. (Doc. 87.)

3. At a pre-trial conference on June 19, 2015, the Court set a deadline of June 29, 2015 for the parties to file their Witness List and their Exhibit Lists. Mr. Rodriguez complied with that deadline. (Doc. 88, 92.)

4. In both his Witness List and his Exhibit List, Mr. Rodriguez indicated that the defense investigation of the case was ongoing; therefore, Mr. Rodriguez reserved the right to seek leave of Court to supplement his Exhibit List and his Witness List should it become necessary. After the filing of his Exhibit List and Witness List, counsel for Mr. Rodriguez told counsel for the United States, Assistant United States Attorney Randy Castellano, that the defense was continuing with its efforts to find a credible witness who could testify that the alleged co-conspirator, Guadalupe Prieto, was in the business of buying and selling automobiles.

5. After the defense investigator pursued numerous, unsuccessful investigative leads to confirm that Guadalupe Prieto had a business buying and

selling cars, the defense today learned that Mr. Rodriguez had, on occasion, accompanied Mr. Prieto to an automobile wholesale business called Copart.

6. The defense investigator, Maclovio Guardiola, met with Vicki Garcia, the Albuquerque General Manager of Copart on this date. Ms. Garcia explained that Copart is an automobile wholesaler which primarily sells vehicles to auto dealers and only rarely sells vehicles to the general public. Ms. Garcia also explained that, in order to buy cars from Copart, a purchaser must supply a copy of his Dealer's License, his Driver's License and a Business License. Ms. Garcia searched computer entries which are kept by Copart in the normal course of business, looking for information on sales to Guadalupe Prieto. Ms. Garcia found that Mr. Prieto has been buying cars from Copart since 2005 and that his most recent purchases were made in 2012. She also searched the paper files of the company and was able to find a file for Guadalupe Prieto which contained a copy of Mr. Prieto's driver's license, which she then furnished to Ms. Guardiola.

7. Counsel for Mr. Rodriguez promptly informed counsel for the United States of the discovery of Ms. Garcia and the substance of Ms. Garcia's potential testimony. In an email of today's date counsel also attached a copy of Mr. Prieto's driver's license which was furnished by Ms. Garcia.

8. Mr. Rodriguez seeks leave of Court to supplement his Witness List to

add Ms. Garcia as a witness and to supplement his Exhibit List to add the copy of Mr. Prieto's driver's license which was kept by Copart in the normal course of business.

9. A defendant has a Sixth Amendment right to present witness and evidence in the defense of his case; however, that right is subject to compliance with the Rules of Criminal Procedures and any Orders of the Court. *Taylor v. Illinois*, 484 U.S. 400, 411-12 (1980). Consequently a District Court has discretion to exclude a witness or a proffered piece of evidence as a sanction for a parties' untimely disclosure based on three factors: (1) the reason for the delay in disclosing the witness or evidence; (2) whether the delay prejudiced the other party; and (3) the feasibility of curing any prejudice with a continuance. *United States v. Wicker*, 848 F.2d 1059, 1061 (10th Cir. 1988).

9. Mr. Rodriguez respectfully submits that, consistent with the fundamental principles of the Sixth Amendment, he should be allowed to supplement his Witness List to add Vicki Garcia as a witness for the defense and to supplement his Exhibit List to add a copy of Guadalupe Prieto's Driver's License which was maintained in the normal course of business by Copart. First, and foremost, Ms. Garcia was disclosed to the Government on the same day that Mr. Rodriguez's investigator learned of her potential testimony as part of the

defense's ongoing investigation. Second, because Ms. Garcia will be testifying as a custodian of records, her testimony does not appear to prejudice the Government or its case in any way. Third, because the witness and the exhibit were disclosed four days before the start of the trial (though admittedly over the Fourth of July holiday weekend), it appears that the Government could prepare to meet this limited testimony without the need for a continuance.

10. Counsel for Mr. Rodriguez has informed counsel for the United States of this Motion to Supplement and he presumes that the Government opposes the Motion.

WHEREFORE for all of the foregoing reasons, Defendant Ernesto Rodriguez respectfully requests leave of Court to supplement his Witness List and his Exhibit List to present the testimony of Vicki Garcia.

Respectfully Submitted,

/s/ Brian A. Pori filed electronically 7/2/15

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Counsel for Ernesto Rodriguez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2015, I filed the foregoing Defendant's Motion for Leave of Court to Supplement the Witness List and the Exhibit List electronically through the CM/ECF system, which caused a copy of the pleading to be served electronically on opposing counsel of record addressed as follows:

Maria Armijo, Esq.
Randy Castellano, Esq.
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103

/s/ filed electronically 7/2/15
Brian A. Pori